

FEDERAL REGISTER

VOLUME 3 1934 NUMBER 225

THE NATIONAL ARCHIVES
OF THE UNITED STATES

Washington, Friday, November 18, 1938

The President

EXECUTIVE ORDER

AMENDMENT OF PARAGRAPH 6, SUBDIVISION VII, SCHEDULE A, CIVIL SERVICE RULES

By virtue of and pursuant to the authority vested in me by paragraph Eighth, subdivision SECOND, section 2 of the Civil Service Act (22 Stat. 403, 404), it is ordered that paragraph 6, Subdivision VII, Schedule A of the Civil Service Rules be, and it is hereby, amended to read as follows:

"6. Temporary clerks, carriers, and laborers required for part-time or intermittent work in the Postal Service in connection with the holiday or seasonal business from November 15, 1938, to January 15, 1939."

FRANKLIN D. ROOSEVELT

THE WHITE HOUSE,
November 15, 1938.

[No. 8007]

[P. R. Doc. 38-3469; Filed, November 17, 1938;
11:12 a. m.]

Rules, Regulations, Orders

TITLE 6—AGRICULTURAL CREDIT FARM SECURITY ADMINISTRATION [Memorandum No. 796]

PREScribing RULES AND REGULATIONS FOR THE ADMINISTRATION OF LOANS, GRANTS AND FARM DEBT ADJUSTMENT ACTIVITIES FOR NEEDY PERSONS, UNDER THE RURAL REHABILITATION PROGRAM

NOVEMBER 16, 1938.

Pursuant to the authority vested in me by the Emergency Relief Appropriation Act of 1938, I hereby prescribe the following rules and regulations for the administration of loans, grants and farm debt adjustment activities for needy persons, under the rural rehabilitation program of the Farm Security Administration:

1. Loans may be made by the Farm Security Administration for the purpose of financing, in whole or in part, the purchase of necessary equipment, stock, supplies and subsistence needs of, and for soil and farm improvements for farmers, farm tenants, croppers and farm laborers, and for such other purposes as may be necessary in the administration of rural rehabilitation and relief for needy persons.

(a) Such loans may be made either to individuals or to bona fide agencies or cooperative associations, provided, however, that loans to such agencies or associations may only be made upon condition that (1) no inequitable restrictions on membership or participation are imposed, and (2) that such agencies or associations be so conducted under the supervision of the Farm Security Administration as to protect adequately the interests of the United States and of the members or participants therein. No loan shall be made without my approval to any individual which would result in his total indebtedness to the Farm Security Administration under the rural rehabilitation program exceeding the amount of \$10,000, to any cooperative association or agency which would result in a total indebtedness of such association or agency to the Farm Security Administration exceeding the amount of \$15,000, or to any individual for participation in any cooperative association or agency which would result in the total outstanding indebtedness of individuals for loans in the aggregate for participation in such association or agency exceeding the amount of \$17,500.

(b) Interest shall be charged on such loans at a rate not greater than 5% nor less than 3% per annum. Different interest rates may be fixed for different classes of loans.

(c) No loan to an individual shall be for a period in excess of 10 years, or to a cooperative association or agency for a period in excess of 40 years. Subject to these limitations, the period for any loan or class of loans, and the repayment schedules therefor, shall be fixed upon the basis of (1) the use to which the

CONTENTS

THE PRESIDENT

Executive Order:	Page
Civil Service Rules, amendment of Paragraph 6, Subdivision VII, Schedule A (temporary clerks, etc., Postal Service)	2733

RULES, REGULATIONS, ORDERS

TITLE 6—AGRICULTURAL CREDIT:	
Farm Security Administration: Rural rehabilitation program, loans, grants, etc., for needy persons	2733
TITLE 7—AGRICULTURE:	
Bureau of Agricultural Economics: Tobacco markets, order of designation of	2734
Bureau of Entomology and Plant Quarantine: Pink bollworm quarantine regulations, modification	2735
TITLE 9—ANIMALS AND ANIMAL PRODUCTS:	
Bureau of Animal Industry: Rinderpest and foot-and-mouth disease, amendment of regulations to prevent introduction of	2736
TITLE 26—INTERNAL REVENUE:	
Bureau of Internal Revenue: Income tax, nonrecognition of gain or loss upon exchanges and distributions made in obedience to orders of Securities and Exchange Commission, etc.	2736
TITLE 29—LABOR:	
Wage and Hour Division: Industry committees, regulations applicable to	2744
TITLE 49—TRANSPORTATION AND RAILROADS:	
Interstate Commerce Commission: Cancellation of obsolete orders	2746



Published by the Division of the Federal Register, The National Archives, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. L. 500), under regulations prescribed by the Administrative Committee, with the approval of the President.

The Administrative Committee consists of the Archivist or Acting Archivist, an officer of the Department of Justice designated by the Attorney General, and the Public Printer or Acting Public Printer.

The daily issue of the *FEDERAL REGISTER* will be furnished by mail to subscribers, free of postage, for \$1 per month or \$10 per year; single copies 10 cents each; payable in advance. Remit by money order payable to Superintendent of Documents, Government Printing Office, Washington, D. C.

Correspondence concerning the publication of the *FEDERAL REGISTER* should be addressed to the Director, Division of the Federal Register, The National Archives, Washington, D. C.

proceeds thereof shall be put; (2) the financial resources and earning capacity of the borrower; and (3) in the case of loans to finance the purchase of specific property, the probable rate of depreciation and the estimated life thereof.

(d) Upon default in any payment due to the Farm Security Administration, it may (1) enforce payment by realizing upon the security or by legal proceedings or (2) renew the obligations of the debtor upon terms and conditions not inconsistent with the provisions of these rules and regulations.

(e) The Farm Security Administration shall have authority to do all acts necessary or proper for the making, servicing, renewing and collecting of loans made pursuant hereto or heretofore made by, or transferred to, said administration. Security shall be taken whenever deemed desirable and for this purpose authority is hereby granted to accept, record, release and satisfy instruments of security of all kinds.

2. The Farm Security Administration may make direct grants to farmers, farm tenants, croppers and farm laborers for necessary subsistence and medical needs. Such grants shall be limited in each instance to the amount required by the farm family to meet actual subsistence needs and to preserve its health. Where the protection of the family water supply, the screening of houses, or the building of sanitary privies is essential to health, grants may be made to eligible families for such purposes when authorized for a given area by the Administrator.

3. The Farm Security Administration shall assist farmers, farm tenants, croppers and farm laborers in bringing about an adjustment of their debts by voluntary agreement with their creditors and

for this purpose may cooperate with state and local agencies.

4. The Administrator of the Farm Security Administration, or, in his absence, the Acting Administrator, shall exercise the authority contained herein subject to my general supervision, may issue detailed instructions for the administration of the rural rehabilitation program, consistent with these rules and regulations, and, to the extent found advisable, shall be empowered to delegate and authorize the redelegation of this authority to subordinate officers and employees of the Farm Security Administration.

5. The Administrator, the Acting Administrator and each subordinate officer and employee of the Farm Security Administration to whom any of the authority herein granted is redelegated, shall be authorized as agent and attorney-in-fact for the United States of America to execute any and all legal instruments necessary or proper in the execution of the program herein established.

6. To the extent legally permissible, the authority delegated by me by memorandum of January 14, 1938, with respect to the state rural rehabilitation corporation trust funds and state rural rehabilitation corporations under the control of the Department, shall be exercised in accordance with these rules and regulations, in the execution of a rural rehabilitation program.

7. Existing orders and procedures governing the Farm Security Administration in the conduct of the rural rehabilitation program shall remain in effect until superseded by instructions issued by the Administrator or the Acting Administrator.

8. Nothing herein contained shall be deemed to affect any programs or activities of the Farm Security Administration involving loans for water facilities, loans for construction purposes, or loans made in connection with any resettlement project or rural rehabilitation project for resettlement purposes.

[SEAL]

H. A. WALLACE,
Secretary.

[F. R. Doc. 38-3465; Filed, November 16, 1938;
3:49 p. m.]

TITLE 7—AGRICULTURE

BUREAU OF AGRICULTURAL ECONOMICS

PART 29—THE TOBACCO INSPECTION ACT

ORDER OF DESIGNATION OF TOBACCO MARKETS

Abingdon, Virginia; Huntington, West Virginia; Knoxville, Tennessee; Maysville, Paris, and Springfield, Kentucky; and Ripley, Ohio

Whereas, The Act of Congress approved August 23, 1935 (49 Stat., 731; 7 U. S. C., Sup. I, Chap. 21A) entitled "The Tobacco Inspection Act" contains the following provisions:

SEC. 2. That transactions in tobacco involving the sale thereof at auction as commonly conducted at auction markets are affected with a public interest; that such transactions are carried on by tobacco producers generally and by persons engaged in the business of buying and selling tobacco in commerce; that the classification of tobacco according to type, grade, and other characteristics affects the prices received therefor by producers; that without uniform standards of classification and inspection the evaluation of tobacco is susceptible to speculation, manipulation, and control, and unreasonable fluctuations in prices and quality determinations occur which are detrimental to producers and persons handling tobacco in commerce; that such fluctuations constitute a burden upon commerce and make the use of uniform standards of classification and inspection imperative for the protection of producers and others engaged in commerce and the public interest therein.

SEC. 5. That the Secretary is authorized to designate those auction markets where tobacco bought and sold thereon at auction, or the products customarily manufactured therefrom, moves in commerce. Before any market is designated by the Secretary under this section he shall determine by referendum the desire of tobacco growers who sold tobacco at auction on such market during the preceding marketing season. The Secretary may at his discretion hold one referendum for two or more markets or for all markets in a type area. No market or group of markets shall be designated by the Secretary unless two-thirds of the growers voting favor it. The Secretary shall have access to the tobacco records of the Collector of Internal Revenue and of the several collectors of internal revenue for the purpose of obtaining the names and addresses of growers who sold tobacco on any auction market, and the Secretary shall determine from said records the eligibility of such grower to vote in such referendum, and no grower shall be eligible to vote in more than one referendum. After public notice of not less than thirty days that any auction market has been so designated by the Secretary, no tobacco shall be offered for sale at auction on such market until it shall have been inspected and certified by an authorized representative of the Secretary according to the standards established under this Act, except that the Secretary may temporarily suspend the requirement of inspection and certification at any designated market whenever he finds it impracticable to provide for such inspection and certification because competent inspectors are not obtainable or because the quantity of tobacco available for inspection is insufficient to justify the cost of such service: Provided, That, in the event competent inspectors are not available, or for other reasons, the Secretary is unable to provide for such inspection and certification at all auction markets within a type area, he shall first designate those auction markets where the greatest number of growers may be served with the facilities available to him. No fee or charge shall be imposed or collected for inspection or certification under this section at any designated auction market. Nothing contained in this Act shall be construed to prevent transactions in tobacco at markets not designated by the Secretary or at designated markets where the Secretary has suspended the requirement of inspection or to authorize the Secretary to close any market.

and

Whereas, pursuant to said Act referendums were held among growers who sold Burley tobacco at auction during the last season on the markets of Abingdon, Virginia; Huntington, West Virginia; Knoxville, Tennessee; Maysville, Paris, and Springfield, Kentucky; and Ripley, Ohio, in which referendums such growers were given an opportunity to vote for or against the designation of said

markets as provided in Section 5 of the Act; and

Whereas, more than two-thirds of the growers voting in said referendums and who sold tobacco at auction on said markets during the last marketing season voted in favor of said designation,

Sec. 29.301 (k) *Designation of tobacco markets.*

Now, therefore, by virtue of the authority conferred upon me by Section 5 of The Tobacco Inspection Act and the affirmative results of the referendums conducted thereunder, the auction tobacco markets of Abingdon, Virginia; Huntington, West Virginia; Knoxville, Tennessee; Maysville, Paris, and Springfield, Kentucky; and Ripley, Ohio are designated as markets where tobacco bought and sold thereon at auction, or the products manufactured therefrom, moves in commerce.

It is hereby ordered, That, effective 30 days from this date no tobacco shall be offered for sale at auction on the above-named markets until it shall have been inspected and certified by an authorized representative of the United States Department of Agriculture according to standards established under the Act; Provided, however, That the requirement of inspection and certification may be suspended at such times as it is found impracticable to provide inspection or when the quantity of tobacco available for inspection is insufficient to justify the cost of such service. No fee or charge shall be imposed or collected for the inspection and certification of tobacco sold or offered for sale at auction on the markets designated herein. (49 Stat. 731; 7 U. S. C. Sup. I, Chap. 21A.)

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, this 16th day of November 1938.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 38-3467; Filed, November 16, 1938;
3:50 p. m.]

BUREAU OF ENTOMOLOGY AND PLANT QUARANTINE

[BEPQ-Q. 52; Rev. of Reg. 3]

MODIFICATION OF PINK BOLLWORM QUARANTINE REGULATIONS

INTRODUCTORY NOTE

The following revision adds to the lightly infested area that part of Pinal County in Arizona not heretofore within the regulated area, all of Maricopa County in Arizona, and the Texas counties of Brooks, Jim Wells, Kenedy, Kleberg, and Nueces. This action is taken with respect to all counties, except Kenedy, owing to the recent finding of light infestations of the pink bollworm of cotton. Kenedy County is included in the regulated area because there are no facilities in that county for ginning the small acreage of cotton grown therein

which is normally ginned in the regulated area.

LEE A. STRONG,
Chief.

AMENDMENT NO. 5 TO REVISED RULES AND REGULATIONS SUPPLEMENTAL TO NOTICE OF QUARANTINE NO. 52

Under authority conferred by section 8 of the Plant Quarantine Act of August 20, 1912 (37 Stat. 315), as amended by the act of Congress approved March 4, 1917 (39 Stat. 1134, 1165), it is ordered that regulation 3 of the revised rules and regulations supplemental to Notice of Quarantine No. 52, on account of the pink bollworm of cotton, which were promulgated on October 13, 1936, as amended effective December 1, 1936, April 6, 1937, October 28, 1937, and January 3, 1938, be and the same is hereby still further amended to read as follows:

REGULATION 3. REGULATED AREAS: HEAVILY AND LIGHTLY INFESTED AREAS

Regulated Areas

In accordance with the provisos to Notice of Quarantine No. 52 (revised), the Secretary of Agriculture designates as regulated areas, for the purpose of these regulations, the following counties and parts of counties in Arizona, New Mexico, and Texas:

Arizona area.—Counties of Cochise, Graham, Greenlee, Maricopa, Pinal, and Santa Cruz, and all of Pima County except that part lying west of the western boundary line of range 8 east.

New Mexico area.—Counties of Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Roosevelt, Sierra, Socorro, and Valencia.

Texas area.—Counties of Andrews, Brewster, Brooks, Cameron, Cochran, Crane, Culberson, Dawson, Ector, El Paso, Gaines, Glasscock, Hidalgo, Hockley, Howard, Hudspeth, Jeff Davis, Jim Wells, Kenedy, Kleberg, Loving, Martin, Midland, Nueces, Pecos, Presidio, Reeves, Starr, Terrell, Terry, Upton, Ward, Willacy, Winkler, and Yoakum; that part of Bailey County lying south of the following-described boundary line: beginning on the east line of said county where the county line intersects the northern boundary line of league 207; thence west following the northern boundary line of leagues 207, 203, 191, 188, 175, and 171 to the northeast corner of league 171; thence south on the western line of league 171 to the northeast corner of the W. H. L. survey; thence west along the northern boundary of the W. H. L. survey and the northern boundary of sections 68, 67, 66, 65, 64, 63, 62, 61, and 60 of block A of the M. B. and B. survey to the western boundary of said county; that part of Lamb County lying south of the following-described boundary line: beginning on the east line of said county where the county line intersects the northern boundary line of section 9 of the R. M. Thomson survey; thence west following the northern boundary line of sections 9 and 10 of the R. M. Thomson survey and the northern

boundary line of sections 6, 5, 4, 3, 2, and 1 of the T. A. Thompson survey and the northern boundary line of leagues 637, 636, and 635 to the southeast corner of league 239; thence north on the eastern boundary line of league 239 to the northeast corner of said league; thence west on the northern boundary line of leagues 239, 238, 233, 222, 218, and 207 to the western boundary line of said county.

Heavily Infested Areas

Of the regulated areas, the following counties and parts of counties are hereby designated as heavily infested within the meaning of these regulations:

Counties of Brewster, Culberson, Jeff Davis, Presidio, and Terrell, in the State of Texas, and all of Hudspeth County in the same State except that part of the northwest corner of said county lying north and west of a ridge of desert land extending from the banks of the Rio Grande northeasterly through the desert immediately west of the town of McNary, such ridge being an extension of the northwest boundary line of section 11, block 65½.

Lightly Infested Areas

The following areas are designated as lightly infested:

The counties of Cochise, Graham, Greenlee, Maricopa, Pinal, and Santa Cruz, and the regulated part of Pima County in Arizona; the counties of Chaves, Dona Ana, Eddy, Grant, Hidalgo, Lea, Luna, Otero, Roosevelt, Sierra, Socorro, and Valencia in New Mexico; the entire counties of Andrews, Brooks, Cameron, Cochran, Crane, Dawson, Ector, El Paso, Gaines, Glasscock, Hidalgo, Hockley, Howard, Jim Wells, Kenedy, Kleberg, Loving, Martin, Midland, Nueces, Pecos, Reeves, Starr, Terry, Upton, Ward, Willacy, Winkler, and Yoakum, the regulated parts of Bailey and Lamb Counties in Texas, and that part of the northwest corner of Hudspeth County, Tex., lying north and west of a ridge of desert land extending from the banks of the Rio Grande northeasterly through the desert immediately west of the town of McNary, such ridge being an extension of the northwest boundary line of section 11, block 65½.

This amendment shall be effective on and after November 17, 1938, and shall on that date supersede amendment No. 4 which became effective January 3, 1938.*

Done at the city of Washington this 15th day of November 1938.

Witness my hand and the seal of the United States Department of Agriculture.

[SEAL] H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 38-3466; Filed, November 16, 1938;
3:49 p. m.]

* Part of the lightly infested area in Arizona is regulated on account of the *Thurberia weevil* under quarantine No. 61, and shipments therefrom must comply with the requirements of that quarantine.

* 2 F. R. 2975 (3439 DI).

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

BUREAU OF ANIMAL INDUSTRY

[Amendment 3 to B. A. I. Order 366¹]

PART 8—REGULATIONS TO PREVENT THE INTRODUCTION INTO THE UNITED STATES OF RINDERPEST AND FOOT-AND-MOUTH DISEASE

NOVEMBER 15, 1938.

SEC. 8.001 *Importation of domestic livestock or meats from countries where rinderpest or foot-and-mouth disease declared exists prohibited.*—Under authority conferred by law upon the Secretary of Agriculture by Section 306 of the Tariff Act of 1930, the order to prevent the introduction into the United States of rinderpest and foot-and-mouth disease (B. A. I. Order 366), dated May 27, 1938, and effective June 1, 1938, as amended, is hereby further amended by adding the names "Latvia" and "Lithuania" to the list of countries in said order, as I have determined that foot-and-mouth disease exists in those countries and I have so officially notified the Secretary of the Treasury.

The effect of this amendment is to render commodities specified in B. A. I. Order 366, originating in Latvia or Lithuania, subject to the provisions of said B. A. I. Order 366.

This amendment, which for purpose of identification is designated Amendment 3 to B. A. I. Order 366, 9 C F R 8.001, shall be effective on and after November 19, 1938. (Sec. 306, 46 Stat. 689, Sec. 2, 32 Stat. 792, 45 Stat. 59; 19 U. S. C. 1306 (a), (b), and (c). 21 U. S. C. 111.) [B. A. I. Order 366, unnumbered paragraph 1, as amended by Amendment 1, August 27, 1938, Amendment 2, September 21, 1938² and Amendment 3, November 15, 1938.]

Done at Washington this 15th day of November 1938.

Witness my hand and the seal of the Department of Agriculture.

[SEAL]

H. A. WALLACE,
Secretary of Agriculture.

[F. R. Doc. 38-3468; Filed, November 16, 1938;
3:50 p. m.]

TITLE 26—INTERNAL REVENUE

BUREAU OF INTERNAL REVENUE

[T. D. 4874]

INCOME TAX, REVENUE ACT OF 1938

REGULATIONS RELATING TO NONRECOGNITION OF GAIN OR LOSS UPON EXCHANGES AND DISTRIBUTIONS MADE IN OBEDIENCE TO ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION, AND THE BASIS OF PROPERTY ACQUIRED UPON SUCH EXCHANGES AND DISTRIBUTIONS

To Collectors of Internal Revenue and Others Concerned:

Pursuant to the provisions of section 62 and Supplement R of the Revenue Act

of 1938, enacted May 28, 1938 (Public, No. 554, Seventy-fifth Congress, Chapter 289, third session), and other provisions of the internal revenue laws, the following regulations are hereby prescribed with respect to the nonrecognition of gain or loss upon exchanges and distributions made in obedience to orders of the Securities and Exchange Commission, and the basis of property acquired upon such exchanges and distributions, as provided in sections 112 (b) (8), 113 (a) (17), 371, 372 and 373 of the Act, such subsections and sections being quoted in, and made a part of, such regulations:

PART I.—NONRECOGNITION OF GAIN OR LOSS

Sec. 112. Recognition of gain or loss.

(b) Exchanges solely in kind.—

(8) Exchanges and distributions in obedience to orders of Securities and Exchange Commission.—In the case of any exchange or distribution described in section 371, no gain or loss shall be recognized to the extent specified in such section with respect to such exchange or distribution.

Sec. 371. Nonrecognition of gain or loss.—

(a) Exchanges of Stock or Securities Only.—No gain or loss shall be recognized to the transferor if stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are transferred to such corporation or to an associate company thereof which is a registered holding company or a majority-owned subsidiary company solely in exchange for stock or securities (other than stock or securities which are nonexempt property), and the exchange is made by the transferee corporation in obedience to an order of the Securities and Exchange Commission.

(b) Exchanges of property for property by corporations.—No gain or loss shall be recognized to a transferor corporation which is a registered holding company or an associate company of a registered holding company, if such corporation, in obedience to an order of the Securities and Exchange Commission transfers property solely in exchange for property (other than nonexempt property), and such order recites that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which the transferor corporation is a member.

(c) Distribution of stock or securities only.—If there is distributed, in obedience to an order of the Securities and Exchange Commission, to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company, stock or securities (other than stock or securities which are nonexempt property), without the surrender by such shareholder of stock or securities in such corporation, no gain to the distributee from the receipt of the stock or securities so distributed shall be recognized.

(d) Transfers within system group.—(1) No gain or loss shall be recognized to a corporation which is a member of a system group (A) if such corporation transfers property to another corporation which is a member of the same system group in exchange for other property, and the exchange by each corporation is made in obedience to an order of the Securities and Exchange Commission, or (B) if there is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, property, without the surrender by such shareholder of stock or securities in the corporation making the distribution, and the distribution is made and received in obedience to an order of the Securities and Exchange Commission. If an exchange by or a distribution to a corporation with respect to which no gain or loss is recognized under any of the provisions of this paragraph may also be con-

sidered to be within the provisions of subsection (a), (b), or (c), then the provisions of this paragraph only shall apply.

(2) If the property received upon an exchange which is within any of the provisions of paragraph (1) of this subsection consists in whole or in part of stock or securities issued by the corporation from which such property was received, and if in obedience to an order of the Securities and Exchange Commission such stock or securities (other than stock which is not preferred as to both dividends and assets) are sold and the proceeds derived therefrom are applied in whole or in part in the retirement or cancellation of stock or of securities of the recipient corporation outstanding at the time of such exchange, no gain or loss shall be recognized to the recipient corporation upon the sale of the stock or securities with respect to which such order was made; except that if any part of the proceeds derived from the sale of such stock or securities is not so applied, or if the amount of such proceeds is in excess of the fair market value of such stock or securities at the time of such exchange, the gain, if any, shall be recognized, but in an amount not in excess of the proceeds which are not so applied, or in an amount not more than the amount by which the proceeds derived from such sale exceed such fair market value, whichever is the greater.

(e) Exchanges not solely in kind.—(1) If an exchange (not within any of the provisions of subsection (d) would be within the provisions of subsection (a) or (b) if it were not for the fact that property received in exchange consists not only of property permitted by such subsection to be received without the recognition of gain or loss, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property, and the loss, if any, to the recipient shall not be recognized.

(2) If an exchange is within the provisions of paragraph (1) of this subsection and if it includes a distribution which has the effect of the distribution of a taxable dividend, then there shall be taxed as a dividend to each distributee such an amount of the gain recognized under such paragraph (1) as is not in excess of his ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913. The remainder, if any, of the gain recognized under such paragraph (1) shall be taxed as a gain from the exchange of property.

(f) Application of section.—The provisions of this section shall not apply to an exchange or distribution unless (1) the order of the Securities and Exchange Commission in obedience to which such exchange or distribution was made recites that such exchange or distribution is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, (2) such order specifies and itemizes the stock and securities and other property which are ordered to be transferred and received upon such exchange or distribution, and (3) such exchange or distribution was made in obedience to such order and was completed within the time prescribed therefor in such order.

(g) Non-application of other provisions.—If an exchange or distribution made in obedience to an order of the Securities and Exchange Commission is within any of the provisions of this section and may also be considered to be within any of the provisions of section 112 (other than the provisions of paragraph (8) of subsection (b)), then the provisions of this section only shall apply.

ART. 371-0. Terms used.—The following terms are defined in section 373 of the Revenue Act of 1938 and when used in these regulations shall have the meanings therein assigned to them: "Order of the Securities and Exchange Commission"; "registered holding company"; "holding-company system"; "associate

¹ Amending 9 CFR 8.001.

² 3 F. R. 2271 DL.

company"; "majority-owned subsidiary company"; "system group"; "nonexempt property"; and "stock or securities". Any other term used in these regulations, which is defined in that Act, shall be given the respective definition contained in the Act.

The sections referred to in these regulations, unless otherwise stated, are sections of the Revenue Act of 1938. Supplement R, referred to in these regulations, is Supplement R of the Revenue Act of 1938 and includes sections 371-373, inclusive, of that Act.

ART. 371-1. Purpose and scope of exception.—The general rule is that the entire amount of gain or loss from the sale or exchange of property is to be recognized (see section 112 (a)) and that the entire amount received as a dividend is to be included in gross income (see sections 22 (a) and 115). Exceptions to the general rule are provided in section 112, one of which is that made by section 112 (b) (8) with respect to exchanges, sales, and distributions specifically described in section 371. Section 371 provides the extent to which gain or loss is not to be recognized on an exchange or sale, or the receipt of a distribution, made in obedience to an order of the Securities and Exchange Commission, which is issued to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935. Section 115 (c) provides that a distribution in liquidation of a corporation shall be treated as an exchange, and such a distribution is to be so treated under the provisions of Supplement R. The order of the Securities and Exchange Commission must be one requiring or approving action which the Commission finds to be necessary or appropriate to effect a simplification or geographical integration of a particular public utility holding-company system. For specific requirements with respect to an order of the Securities and Exchange Commission, see section 371 (f).

The requirements for nonrecognition of gain or loss as provided in section 371 are precisely stated with respect to the following four general types of transactions:

- (1) The exchange that is provided for in section 371 (a), in which stock or securities in a registered holding company or a majority-owned subsidiary company are exchanged for stock or securities.
- (2) The exchange that is provided for in section 371 (b), in which a registered holding company or an associate company of a registered holding company exchanges property for property.
- (3) The distribution that is provided for in section 371 (c), in which stock or securities are distributed to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company.
- (4) The transfer that is provided for in section 371 (d), in which a corporation which is a member of a system group

transfers property to another member of the same system group.

Certain rules with respect to the receipt of nonexempt property on an exchange described in section 371 (a) or (b) are prescribed in section 371 (e).

These new exceptions to the general rule are to be strictly construed as in the case of the other exceptions in section 112. Unless both the purpose and the specific requirements of Supplement R are clearly met, the recognition of gain or loss upon the exchange, sale, or distribution will not be postponed under Supplement R. Moreover, even though a taxable transaction occurs in connection or simultaneously with a realization of gain or loss to which nonrecognition is accorded, nevertheless, as under the various provisions of section 112, nonrecognition will not be accorded to such taxable transaction. In other words, the provisions of section 371 do not extend in any case to gain or loss other than that realized from and directly attributable to a disposition of property as such, or the receipt of a corporate distribution as such, in an exchange, sale, or distribution specifically described in section 371.

The application of the provisions of Supplement R is intended to result only in postponing the recognition of gain or loss until a disposition of property is made which is not covered by such provisions, and the continuation of the basis as provided in section 372 is designed to effect this result. Although the time of recognition may be shifted, there must be a true reflection of income in all cases, and it is intended that the provisions of Supplement R shall not be construed or applied in such a way as to defeat this purpose.

ART. 371-2. Exchanges of stock or securities solely for stock or securities.—The exchange, without the recognition of gain or loss, that is provided for in section 371 (a) must be one in which stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary company are exchanged solely for stock or securities other than stock or securities which constitute nonexempt property. An exchange is not within the provisions of section 371 (a), unless the stock or securities transferred and those received are stock or securities as defined by section 373 (f). The stock or securities which may be received without the recognition of gain or loss are not limited to stock or securities in the corporation from which they are received. An exchange within the provisions of section 371 (a) may be a transaction between the holder of stock or securities and the corporation which issued the stock or securities. Also the exchange may be made by a holder of stock or securities with an associate company (i. e., a corporation in the same holding-company system with the issuing corporation) which is a registered holding company or a majority-owned subsidiary company. In either

case, the nonrecognition provisions of section 371 (a) apply only to the holder of the stock or securities. However, the transferee corporation must be acting in obedience to an order of the Securities and Exchange Commission directed to such corporation, if no gain or loss is to be recognized to the holder of the stock or securities who makes the exchange with such corporation. See also section 371 (b), in case the holder of the stock or securities is a registered holding company or an associate company of a registered holding company. An exchange is not within the provisions of section 371 (a) if it is within the provisions of section 371 (d), relating to transfers within a system group. For further limitations, see section 371 (f).

ART. 371-3. Exchanges of property for property by corporations.—The nonrecognition of gain or loss provided for in section 371 (b) is limited to an exchange by a transferor corporation which is (1) a registered holding company or (2) an associate company of a registered holding company. No restriction is imposed with respect to the class of property which may be transferred by the transferor corporation, but in order that all of the transferor corporation's gain from the exchange be nonrecognized (see section 371 (e)), no part of the property received by such corporation may consist of nonexempt property, though the receipt, in part, of nonexempt property by the transferor corporation does not prevent nonrecognition of all of its loss from the exchange under section 371 (e). It is essential to the nonrecognition either of gain or loss that in making the exchange the transferor corporation shall be acting in obedience to an order of the Securities and Exchange Commission reciting that such exchange by the transferor corporation is necessary or appropriate to the integration or simplification of the holding company system of which such corporation is a member. An exchange is not within the provisions of section 371 (b), if it is within the provisions of section 371 (d), relating to transfers within a system group. For further limitations, see section 371 (f).

Example.—The A Corporation, a registered holding company, is a member of holding-company system No. 1 which comprises an integrated utility system in region X, except for the fact that the A Corporation owns all of the voting stock of the B Corporation with transmission lines in region Y. The transmission lines of the B Corporation have an adjusted basis of \$300,000 and a fair market value of \$325,000. The C Corporation, a registered holding company, is a member of holding-company system No. 2 which comprises an integrated utility system in region Y, except for the fact that the C Corporation owns all of the voting stock of the D Corporation, an operating company with a generating plant and transmission lines in region X. The generating plant and

transmission lines of the D Corporation have an adjusted basis of \$275,000 and a fair market value of \$325,000. In obedience to an appropriate order of the Securities and Exchange Commission relative to the integration of holding-company system No. 1, the B Corporation transfers its transmission lines in region Y to the D Corporation in exchange for the generating plant and transmission lines of the D Corporation in region X. Under section 371 (b), no gain is recognized to the B Corporation upon the exchange. However, the provisions of section 371 (b) do not apply to the disposition by the D Corporation of its generating plant and transmission lines in region X unless such disposition is made in obedience to an appropriate order of the Securities and Exchange Commission which relates to such disposition and recites that such disposition is necessary or appropriate to the integration of holding-company system No. 2.

ART. 371-4. Distribution solely of stock or securities.—If, without any surrender of his stock or securities as defined in section 373 (f), a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company receives stock or securities in such corporation or owned by such corporation, no gain to the shareholder will be recognized with respect to the stock or securities received by such shareholder which do not constitute nonexempt property, if the distribution to such shareholder is made by the distributing corporation in obedience to an order of the Securities and Exchange Commission directed to such corporation. A distribution is not within the provisions of section 371 (c) if it is within the provisions of section 371 (d), relating to transfers within a system group. A distribution is also not within the provisions of section 371 (c) if it involves a surrender by the shareholder of stock or securities or a transfer by the shareholder of property in exchange for the stock or securities received by the shareholder. For further limitations, see section 371 (f).

ART. 371-5. Transfers within system group.—The nonrecognition of gain or loss provided for in section 371 (d) (1) is applicable to an exchange of property for other property (including money and other nonexempt property). In order for any exchange to come within such section, all the parties to the exchange must be corporations which are members of the same system group. The term "system group" is defined in section 373 (d).

Section 371 (d) (1) also provides for nonrecognition of gain to a corporation which is a member of a system group if property (including money or other nonexempt property) is distributed to such corporation as a shareholder in a corporation which is a member of the same system group, without the surrender by

such shareholder of stock or securities in the distributing corporation.

As stated in article 371-1 of these regulations, nonrecognition of gain or loss will not be accorded to a transaction not clearly provided for in Supplement R, even though such transaction occurs simultaneously or in connection with an exchange, sale, or distribution to which nonrecognition is specifically accorded. Therefore, nonrecognition will not be accorded to any gain or loss realized from the discharge, or the removal of the burden, of the pecuniary obligations of a member of a system group, even though such obligations are acquired upon a transfer or distribution specifically described in section 371 (d) (1); but the fact that the acquisition of such obligations was upon a transfer or distribution specifically described in section 371 (d) (1) will, because of the basic provisions of section 372 (d), affect the cost to the member of such discharge or its equivalent. Thus, section 371 (d) (1) does not provide for the nonrecognition of any gain or loss realized from the discharge of the indebtedness of a member of a system group as the result of the acquisition in exchange, sale, or distribution of its own bonds, notes, or other evidences of indebtedness which were acquired by another member of the same system group for a consideration less or more than the issuing price thereof (with proper adjustments for amortization of premiums or discounts).

Example.—Suppose that the A Corporation and the B Corporation are both members of the same system group; that the A Corporation holds at a cost of \$900 a bond issued by the B Corporation at par, \$1,000; and that the A Corporation and the B Corporation enter into an exchange subject to the provisions of section 371 (d) (1) in which the \$1,000 bond of the B Corporation is transferred from the A Corporation to the B Corporation. The \$900 basis reflecting the cost to the A Corporation which would have been the basis available to the B Corporation if the property transferred to it had been something other than its own securities (see article 372-4 of these regulations) will, in this type of transaction, reflect the cost to the B Corporation of effecting a retirement of its own \$1,000 bond. The \$100 gain of the B Corporation reflected in the retirement will therefore be recognized.

No exchange or distribution may be made without the recognition of gain or loss as provided for in section 371 (d) (1), unless all the corporations which are parties to such exchange or distribution are acting in obedience to an order of the Securities and Exchange Commission. If an exchange or distribution is within the provisions of section 371 (d) (1) and also may be considered to be within some other provision of section 371, it shall be considered that only the provisions of section 371 (d) (1) apply

and that the nonrecognition of gain or loss upon such exchange or distribution is by virtue of that section.

ART. 371-6. Sale of stock or securities received upon exchange by members of system group.—Section 371 (d) (2) provides that to the extent that property received upon an exchange by corporations which are members of the same system group consists of stock or securities issued by the corporation from which such property was received, such stock or securities may, under certain specifically described circumstances, be sold to a party not a member of the system group, without the recognition of gain or loss to the selling corporation. The nonrecognition of gain or loss is limited, in the case of stock, to a sale of stock which is preferred as to both dividends and assets. The stock or securities must have been received upon an exchange with respect to which section 371 (d) (1) operated to prevent recognition of gain or loss to any party to the exchange. Nonrecognition of gain or loss upon the sale of such stock or securities is permitted only if the proceeds derived from the sale are applied in retirement or cancellation of stock or securities of the selling corporation which were outstanding at the time the exchange was made. It is also essential to nonrecognition of gain or loss upon the sale that both the sale of the stock or securities and the application of the proceeds derived therefrom be made in obedience to an order of the Securities and Exchange Commission. If any part of the proceeds derived from the sale is not applied in making the required retirement or cancellation of stock or securities and if the sale is otherwise within the provisions of section 371 (d) (2), the gain resulting from the sale shall be recognized, but in an amount not in excess of the proceeds which are not so applied. In any event, if the proceeds derived from the sale of the stock or securities exceed the fair market value of such stock or securities at the time of the exchange through which they were acquired by the selling corporation, the gain resulting from the sale is to be recognized to the extent of such excess. Section 371 (d) (2) does not provide for the nonrecognition of any gain resulting from the retirement of bonds, notes, or other evidences of indebtedness for a consideration less than the issuing price thereof. Also, that section does not provide for the nonrecognition of gain or loss upon the sale of any stock or securities received upon a distribution or otherwise than upon an exchange.

Example.—The X Corporation and the Y Corporation, both of which make their income tax returns on a calendar year basis, are members of the same system group. As part of an exchange in which section 371 (d) (1) is applicable the Y Corporation on June 1, 1938, issues to the X Corporation 1,000 shares of class

A stock, preferred as to both dividends and assets. The fair market value of such stock at the time of issuance is \$90,000 and its basis to the X Corporation is \$75,000. On December 1, 1938, in obedience to an appropriate order of the Securities and Exchange Commission, the X Corporation sells all of such stock to the public for \$100,000 and applies \$95,000 of this amount to the retirement of its own bonds, which were outstanding on June 1, 1938. The remaining \$5,000 is not used to retire any of the X Corporation's stock or securities. Of the total gain of \$25,000 realized on the disposition of the Y Corporation stock only \$10,000 is recognized, being the difference between the fair market value of the stock when acquired and the amount for which it was sold, since such amount is greater than the portion (\$5,000) of the proceeds not applied to the retirement of the X Corporation's stock or securities.

If in the above example the stock required by the X Corporation had not been stock of the Y Corporation issued to the X Corporation or if it had been stock not preferred as to both dividends and assets, the full amount of the gain (\$25,000) realized upon its disposition would have been recognized, regardless of what was done with the proceeds.

ART. 371-7. Exchanges in which money or other nonexempt property is received.—Under section 371 (e) (1), if in any exchange (not within any of the provisions of section 371 (d)) in which (a) stock or securities in a corporation which is a registered holding company or a majority-owned subsidiary are exchanged for stock or securities as provided for in section 371 (a), or (b) property of a corporation which is a registered holding company or an associate company of a registered holding company is exchanged for other property as provided for in section 371 (b), there is received by the taxpayer money or other nonexempt property (in addition to property permitted to be received without recognition of gain), then—

(1) The gain, if any, to the taxpayer is to be recognized in an amount not in excess of the sum of the money and the fair market value of the other nonexempt property, but

(2) The loss, if any, to the taxpayer from such an exchange is not to be recognized to any extent.

If money or other nonexempt property is received from a corporation in an exchange described in this article and if the distribution of such money or other nonexempt property by or on behalf of such corporation has the effect of the distribution of a taxable dividend, then, as provided in section 371 (e) (2), there shall be taxed to each distributee (1) as a dividend, such an amount of the gain recognized on the exchange as is not in excess of the distributee's ratable share of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, and (2) the

remainder of the gain so recognized shall be taxed as a gain from the exchange of property.

ART. 371-8. Requirements with respect to order of Securities and Exchange Commission.—The term "order of the Securities and Exchange Commission" is defined in section 373 (a). In addition to the requirements specified in that definition, section 371 (f) provides that the provisions of section 371 shall not apply to an exchange or distribution unless each of the following requirements is met:

(1) The order of the Securities and Exchange Commission must recite that the exchange or distribution is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935.

(2) The order shall specify and itemize the stock and securities and other property (including money) which are ordered to be transferred and received upon the exchange or distribution, so as clearly to identify such property.

(3) The exchange or distribution shall be made in obedience to the order and shall be completed within the time prescribed in such order.

These requirements were not designed merely to simplify the administration of the provisions of section 371, and they are not to be considered as pertaining only to administrative matters. Each one of the three requirements is of the essence, and must be met if gain or loss is not to be recognized upon the transaction.

ART. 371-9. Non-application of other provisions of the Act.—The effect of section 371 (g) is that an exchange, sale, or distribution which is within section 371 shall, with respect to the nonrecognition of gain or loss and the determination of basis, be governed only by Supplement R, the purpose being to prevent overlapping of the provisions of such supplement and other provisions of the Act. In other words, if by virtue of section 371 any portion of a person's gain or loss on any particular exchange, sale or distribution is not to be recognized, then the gain or loss of such person shall be nonrecognized only to the extent provided in section 371, regardless of what the result might have been under section 112 if Supplement R had not been enacted; and similarly, the basis in the hands of such person of the property received by him in such transaction shall be the basis provided by section 372, regardless of what the basis of such property might have been under section 113 if Supplement R had not been enacted. On the other hand, if section 371 does not provide for the nonrecognition of any portion of a person's gain or loss (whether or not such person is another party to the same transaction referred to above), then the gain or loss of such person shall be recognized or nonrecognized to the extent provided for by other provisions of the Act as if Supplement R had not been

enacted; and similarly, the basis in his hands of the property received by him in such transaction shall be the basis provided by other provisions of the Act as if Supplement R had not been enacted.

ART. 371-10. Records to be kept and information to be filed with returns.—(a) Every holder of stock or securities who receives stock or securities and other property (including money) upon an exchange shall, if the exchange is made with a corporation acting in obedience to an order of the Securities and Exchange Commission, file as a part of his income tax return for the taxable year in which the exchange takes place a complete statement of all facts pertinent to the nonrecognition of gain or loss upon such exchange, including—

(1) A clear description of the stock or securities transferred in the exchange, together with a statement of the cost or other basis of such stock or securities.

(2) The name and address of the corporation from which the stock or securities were received in the exchange.

(3) A statement of the amount of stock or securities and other property (including money) received from the exchange. The amount of each kind of stock or securities and other property received shall be set forth upon the basis of the fair market value thereof at the date of the exchange.

(b) Each corporation which is a party to an exchange made in obedience to an order of the Securities and Exchange Commission directed to such corporation shall file as a part of its income tax return for its taxable year in which the exchange takes place a complete statement of all facts pertinent to the nonrecognition of gain or loss upon such exchange, including—

(1) A copy of the order of the Securities and Exchange Commission directed to such corporation, in obedience to which the exchange was made.

(2) A certified copy of the corporate resolution authorizing the exchange.

(3) A clear description of all property, including all stock or securities, transferred in the exchange, together with a complete statement of the cost or other basis of each class of property.

(4) The date of acquisition of any stock or securities transferred in the exchange, and, if any of such stock or securities were acquired by the corporation in obedience to an order of the Securities and Exchange Commission, a copy of such order.

(5) The name and address of all persons to whom any property was transferred in the exchange.

(6) If any property transferred in the exchange was transferred to another corporation, a copy of any order of the Securities and Exchange Commission directed to the other corporation, in obedience to which the exchange was made by such other corporation.

(7) If the corporation transfers any nonexempt property, the amount of the

undistributed earnings and profits of the corporation accumulated after February 28, 1913, to the time of the exchange.

(8) A statement of the amount of stock or securities and other property (including money) received upon the exchange, including a statement of all distributions or other disposition made thereof. The amount of each kind of stock or securities and other property received shall be stated on the basis of the fair market value thereof at the date of the exchange.

(9) A statement showing as to each class of its stock the number of shares and percentage owned by any other corporation, the voting rights and voting power, and the preference (if any) as to both dividends and assets.

(c) Each shareholder who receives stock or securities or other property (including money) upon a distribution made by a corporation in obedience to an order of the Securities and Exchange Commission shall file as a part of his income tax return for the taxable year in which such distribution is received a complete statement of all facts pertinent to the nonrecognition of gain upon such distribution, including—

(1) The name and address of the corporation from which the distribution is received.

(2) A statement of the amount of stock or securities or other property received upon the distribution, including (in case the shareholder is a corporation) a statement of all distributions or other disposition made of such stock or securities or other property by the shareholder. The amount of each class of stock or securities and each kind of property shall be stated on the basis of the fair market value thereof at the date of the distribution.

(3) If the shareholder is a corporation, a statement showing as to each class of its stock the number of shares and percentage owned by a registered holding company or a majority-owned subsidiary company of a registered holding company, the voting rights and voting power, and the preference (if any) as to both dividends and assets.

(d) Every corporation making a distribution in obedience to an order of the Securities and Exchange Commission shall file as a part of its income tax return for its taxable year in which the distribution is made a complete statement of all facts pertinent to the nonrecognition of gain to the distributee upon such distribution, including—

(1) A copy of the order of the Securities and Exchange Commission, in obedience to which the distribution was made.

(2) A certified copy of the corporate resolution authorizing the distribution.

(3) A statement of the amount of stock or securities or other property (including money) distributed to each shareholder. The amount of each kind of stock or securities or other property

shall be stated on the basis of the fair market value thereof at the date of the distribution.

(4) The date of acquisition of the stock or securities distributed, and, if any of such stock or securities were acquired by the distributing corporation in obedience to an order of the Securities and Exchange Commission, a copy of such order.

(5) The amount of the undistributed earnings and profits of the corporation accumulated after February 28, 1913, to the time of the distribution.

(6) A statement showing as to each class of its stock the number of shares and percentage owned by any other corporation, the voting rights and voting power, and the preference (if any) as to both dividends and assets.

(e) Each corporation which is a member of a system group and which in obedience to an order of the Securities and Exchange Commission sells stock or securities received upon an exchange (made in obedience to an order of the Securities and Exchange Commission) and applies the proceeds derived therefrom in retirement or cancellation of its own stock or securities shall file as a part of its income tax return for the taxable year in which the sale is made a complete statement of all facts pertaining to the nonrecognition of gain or loss upon such sale, including—

(1) A copy of the order of the Securities and Exchange Commission in obedience to which the sale was made.

(2) A copy of the order of the Securities and Exchange Commission in obedience to which the proceeds derived from the sale were applied in whole or in part in the retirement or cancellation of its stock or securities.

(3) A certified copy of the corporate resolutions authorizing the sale of the stock or securities and the application of the proceeds derived therefrom.

(4) A clear description of the stock or securities sold, including the name and address of the corporation by which they were issued.

(5) The date of acquisition of the stock or securities sold, together with a statement of the fair market value of such stock or securities at the date of acquisition, and a copy of all orders of the Securities and Exchange Commission in obedience to which such stock or securities were acquired.

(6) The amount of the proceeds derived from such sale.

(7) The portion of the proceeds of such sale which was applied in retirement or cancellation of its stock or securities, together with a statement showing how long such stock or securities were outstanding prior to retirement or cancellation.

(8) The issuing price of its stock or securities which were retired or cancelled.

(f) Permanent records in substantial form shall be kept by every taxpayer who participates in an exchange or distribution made in obedience to an order of

the Securities and Exchange Commission, showing the cost or other basis of the property transferred and the amount of stock or securities and other property (including money) received, in order to facilitate the determination of gain or loss from a subsequent disposition of such stock or securities and other property received on the exchange or distribution.

PART II—BASIS FOR DETERMINING GAIN OR LOSS

Sec. 113. *Adjusted basis for determining gain or loss.*

(a) *Basis (unadjusted) of property.*—The basis of property shall be the cost of such property; except that—

(17) *Property acquired in connection with exchanges and distributions in obedience to certain orders of Securities and Exchange Commission.*—If the property was acquired in any manner described in section 372, the basis shall be that prescribed in such section with respect to such property.

Sec. 372. *Basis for determining gain or loss.*

(a) *Exchanges generally.*—If the property was acquired upon an exchange subject to the provisions of section 371 (a), (b), or (e), the basis shall be the same as in the case of the property exchanged, decreased in the amount of any money received by the taxpayer and increased in the amount of gain or decreased in the amount of loss to the taxpayer that was recognized upon such exchange under the law applicable to the year in which the exchange was made. If the property so acquired consisted in part of the type of property permitted by section 371 (a) or (b) to be received without the recognition of gain or loss, and in part of nonexempt property, the basis provided in this subsection shall be allocated between the properties (other than money) received, and for the purpose of the allocation there shall be assigned to such nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange. This subsection shall not apply to property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it.

(b) *Transfers to corporations.*—If, in connection with a transfer subject to the provisions of section 371 (a), (b), or (e), the property was acquired by a corporation, either as paid-in surplus or as a contribution to capital, or in consideration for stock or securities issued by the corporation receiving the property (including cases where part of the consideration for the transfer of such property to the corporation consisted of property or money in addition to such stock or securities), then the basis shall be the same as it would be in the hands of the transferor, increased in the amount of gain or decreased in the amount of loss recognized to the transferor upon such transfer under the law applicable to the year in which the transfer was made.

(c) *Distributions of stock or securities.*—If the stock or securities were received in a distribution subject to the provisions of section 371 (e), then the basis in the case of the stock in respect of which the distribution was made shall be apportioned, under rules and regulations prescribed by the Commissioner with the approval of the Secretary, between such stock and the stock or securities distributed.

(d) *Transfers within system group.*—If the property was acquired by a corporation which is a member of a system group upon a transfer or distribution described in section 371 (d) (1), then the basis shall be the same as it would be in the hands of the transferor; except that if such property is stock or securities issued by the corporation from which such stock or securities were received and they were issued (1) as the sole consideration for the property transferred to such corporation, then the basis of such

stock or securities shall be either (A) the same as in the case of the property transferred therefor, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower; or (2) as part consideration for the property transferred to such corporation, then the basis of such stock or securities shall be either (A) an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities at the time of their receipt bears to the total fair market value of the entire consideration received, or (B) the fair market value of such stock or securities at the time of their receipt, whichever is the lower.

ART. 372-0. Basis for determining gain or loss.—Section 113 (a) (17) provides that if property is acquired in any manner described in section 372, the basis shall be that prescribed in such section with respect to such property. Section 372 therefore expands section 113 (a) in order to make adequate provisions with respect to the basis of property acquired in a transfer made in obedience to an order of the Securities and Exchange Commission in connection with which the recognition of gain or loss is prohibited by the provisions of section 112 (b) (8) and section 371 with respect to the whole or any part of the property received. In general, it is intended that the basis for determining gain or loss pertaining to the property prior to its transfer, as well as the basis for determining the amount of depreciation or depletion deductible and the amount of earnings or profits available for distribution, shall continue notwithstanding the nontaxable conversion of the asset in form or its change in ownership. The continuance of the basis may be reflected in a shift thereof from one asset to another in the hands of the same owner, or in its transfer with the property from one owner into the hands of another. See also article 371-1 of these regulations.

ART. 372-1. Basis of property acquired upon exchanges under section 371 (a), 371 (b), or 371 (c).—In the case of an exchange of stock or securities for stock or securities as described in section 371 (a), or an exchange of property for property as described in section 371 (b), if no part of the gain or loss upon such exchange was recognized under section 371, the basis of the property acquired is the same as the basis of the property transferred by the taxpayer with proper adjustments to the date of the exchange.

If, in an exchange of stock or securities as described in section 371 (a) or in an exchange of property for property as described in section 371 (b), gain to the taxpayer was recognized under section 371 (e), on account of the receipt of money, the basis of the property acquired is the basis of the property transferred (adjusted to the date of the exchange), decreased by the amount of money received and increased by the amount of gain recognized upon the exchange. If, upon such exchange, there were received by the taxpayer money and other nonexempt property (not permitted to be received without

the recognition of gain), and gain from the transaction was recognized under section 371 (e), the basis (adjusted to the date of the exchange) of the property transferred by the taxpayer, decreased by the amount of money received and increased by the amount of gain recognized, must be apportioned to and is the basis of the properties (other than money) received on the exchange. For the purpose of the allocation of such basis to the properties received, there must be assigned to the nonexempt property (other than money) an amount equivalent to its fair market value at the date of the exchange.

Section 371 (e) provides that no loss may be recognized on an exchange of stock or securities for stock or securities as described in section 371 (a), or on an exchange of property for property as described in section 371 (b), although the taxpayer receives money or other nonexempt property from the transaction. However, the basis of the property (other than money) received by the taxpayer is the basis (adjusted to the date of the exchange) of the property transferred, decreased by the amount of money received. This basis must be apportioned to the properties received, and for this purpose there must be allocated to the nonexempt property (other than money) an amount of such basis equivalent to the fair market value of such nonexempt property at the date of the exchange.

Section 372 (a) does not apply in ascertaining the basis of property acquired by a corporation by the issuance of its stock or securities as the consideration in whole or in part for the transfer of the property to it. For the rule in such cases, see section 372 (b).

ART. 372-2. Basis of property acquired by corporation under section 371 (a), 371 (b), or 371 (c) as contribution of capital or surplus, or in consideration for its own stock or securities.—If in connection with an exchange of stock or securities for stock or securities as described in section 371 (a), or an exchange of property for property as described in section 371 (b), or an exchange as described in section 371 (c), property is acquired by a corporation by the issuance of its stock or securities, the basis of such property shall be determined under section 372 (b). If the corporation issued its stock or securities as part or sole consideration for the property acquired, the basis of the property in the hands of the acquiring corporation is the basis (adjusted to the date of the exchange) which the property would have had in the hands of the transferor if the transfer had not been made, increased in the amount of gain or decreased in the amount of loss recognized under section 371 to the transferor upon the transfer. If any property is acquired by a corporation from a shareholder as paid-in surplus, or from any person as a contribution to capital,

the basis of the property to the corporation is the basis (adjusted to the date of acquisition) of the property in the hands of the transferor.

ART. 372-3. Basis of stock or securities acquired by shareholder upon tax-free distribution under section 371 (c).—Under section 372 (c), if there was distributed to a shareholder in a corporation which is a registered holding company or a majority-owned subsidiary company stock or securities (other than stock or securities which are nonexempt property), and if by virtue of section 371 (c) no gain was recognized to the shareholder upon such distribution, then the basis of the stock in respect of which the distribution was made must be apportioned between such stock and the stock or securities so distributed to the shareholder. The basis of the old shares and the stock or securities received upon the distribution shall be determined in accordance with the following rules:

(1) If the stock or securities received upon the distribution consist solely of stock in the distributing corporation and the stock received is all of substantially the same character and preference as the stock in respect of which the distribution is made, the basis of each share will be the quotient of the cost or other basis of the old shares of stock divided by the total number of the old and the new shares.

(2) If the stock or securities received upon the distribution is in whole or in part stock in a corporation other than the distributing corporation, or is in whole or in part stock of a character or preference materially different from the stock in respect of which the distribution is made, or if the distribution consists in whole or in part of securities other than stock, the cost or other basis of the stock in respect of which the distribution is made shall be apportioned between such stock and the stock or securities distributed in proportion, as nearly as may be, to the respective values of each class of stock or security, old and new, at the time of such distribution, and the basis of each share of stock or unit of security will be the quotient of the cost or other basis of the class of stock or security to which such share or unit belongs, divided by the number of shares or units in the class. Within the meaning of the foregoing provisions stocks or securities in one corporation are different in class from stocks or securities in another corporation, and, in general, any material difference in character or preference or terms sufficient to distinguish one stock or security from another stock or security so that different values may properly be assigned thereto, will constitute a difference in class. As to the basis of stock or securities distributed by one member of a system group to another member of the same system group, see section 372 (d).

ART. 372-4. Basis of property acquired under section 371 (d) in transactions between corporations of the same system group.—If property was acquired by a corporation which is a member of a system group, from a corporation which is a member of the same system group, upon a transfer or distribution described in section 371 (d) (1), then as a general rule the basis of such property in the hands of the acquiring corporation is the basis which such property would have had in the hands of the transferor if the transfer or distribution had not been made.

Except as otherwise indicated in this article, this rule will apply equally to cases in which the consideration for the property acquired consists of stock or securities, money, and other property, or any of them, but it is contemplated that an ultimate true reflection of income will be obtained in all cases, notwithstanding any peculiarities in form which the various transactions may assume. See the example in article 371-5 of these regulations.

An exception to this general rule is provided for in case the property acquired consists of stock or securities issued by the corporation from which such stock or securities were received. If such stock or securities were the sole consideration for the property transferred to the corporation issuing such stock or securities, then the basis of the stock or securities shall be (1) the same as the basis (adjusted to the time of the transfer) of the property transferred for such stock or securities, or (2) the fair market value of such stock or securities at the time of their receipt, whichever is the lower. If such stock or securities constituted only part consideration for the property transferred to the corporation issuing such stock or securities, then the basis shall be an amount which bears the same ratio to the basis of the property transferred as the fair market value of such stock or securities on their receipt bears to the total fair market value of the entire consideration received, except that the fair market value of such stock or securities at the time of their receipt shall be the basis therefor, if such value is lower than such amount.

Example.—Suppose the A Corporation has property with an adjusted basis of \$600,000, and in an exchange in which section 371 (d) (1) is applicable, transfers such property to the B Corporation in exchange for a total consideration of \$1,000,000, consisting of (1) cash in the amount of \$100,000, (2) tangible property having a fair market value of \$400,000 and an adjusted basis in the hands of the B Corporation of \$300,000, and (3) stock or securities issued by the B Corporation with a par value and a fair market value as of the date of their receipt in the amount of \$500,000. The basis to the B Corporation of the property received by it is \$600,000, which is the adjusted basis of such property in the hands of the A Corporation. The

basis to the A Corporation of the assets (other than cash) received by it is as follows: Tangible property, \$300,000, the adjusted basis of such property to the B Corporation, the former owner; stock or securities issued by the B Corporation, \$300,000, an amount equal to 500,000/1,000,000 of \$600,000.

Suppose that the property of the A Corporation transferred to the B Corporation had an adjusted basis of \$1,100,000 instead of \$600,000, and that all other factors in the illustration in the preceding paragraph remain the same. In such case the basis to the A Corporation of the stock or securities in the B Corporation is \$500,000 which was the fair market value of such stock or securities at the time of their receipt by the A Corporation, and not the amount established as 500,000/1,000,000ths of \$1,100,000, or \$550,000.

PART III—DEFINITIONS

SEC. 373. Definitions.

As used in this supplement—

(a) The term "order of the Securities and Exchange Commission" means an order (1) issued after the date of enactment of this Act and prior to January 1, 1940, by the Securities and Exchange Commission to effectuate the provisions of section 11 (b) of the Public Utility Holding Company Act of 1935, or (2) issued by the Commission subsequent to December 31, 1939, in which it is expressly stated that an order of the character specified in clause (1) is amended or supplemented, and (3) which has become final in accordance with law.

(b) The terms "registered holding company", "holding-company system", and "associate company" shall have the meanings assigned to them by section 2 of the Public Utility Holding Company Act of 1935.

(c) The term "majority-owned subsidiary company" of a registered holding company means a corporation, stock of which, representing in the aggregate more than 50 per centum of the total combined voting power of all classes of stock of such corporation entitled to vote (not including stock which is entitled to vote only upon default or nonpayment of dividends or other special circumstances) is owned wholly by such registered holding company, or partly by such registered holding company and partly by one or more majority-owned subsidiary companies thereof, or by one or more majority-owned subsidiary companies of such registered holding company.

(d) The term "system group" means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(1) At least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations; and

(2) The common parent corporation owns directly at least 90 per centum of each class of the stock (other than stock which is preferred as to both dividends and assets) of at least one of the other corporations; and

(3) Each of the corporations is either a registered holding company or a majority-owned subsidiary company.

(e) The term "nonexempt property" means—

(1) Any consideration in the form of a cancellation or assumption of debts or other liabilities (including a continuance of encumbrances subject to which the property was transferred);

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers'

acceptances) having a maturity at the time of issuance of not exceeding twenty-four months, exclusive of days of grace;

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof);

(4) Stock or securities which were acquired after February 28, 1938, unless such stock or securities (other than obligations described as nonexempt property in paragraph (2) or (3)) were acquired in obedience to an order of the Securities and Exchange Commission;

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in paragraph (2) or (3).

(f) The term "stock or securities" means shares of stock in any corporation, certificates of stock or interest in any corporation, notes, bonds, debentures, and evidences of indebtedness (including any evidence of an interest in or right to subscribe to or purchase any of the foregoing).

ART. 373-1. Definition.—(a) "Order of the Securities and Exchange Commission."—An order of the Securities and Exchange Commission as defined in section 373 (a) must be issued after May 28, 1938 (the date of the enactment of the Revenue Act of 1938) and must be issued under the authority of section 11 (b) or 11 (e) of the Public Utility Holding Company Act of 1935 to effectuate the provisions of section 11 (b) of such Act (or must amend or supplement an order so issued and expressly state that it amends or supplements such an order). In all cases the order must have become final in accordance with law; i.e., it must be valid, outstanding, and not subject to further appeal. See further sections 373 (a) and 371 (f), Section 11 (b) of the Public Utility Holding Company Act of 1935 provides:

(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business

(other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems.

(2) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such steps as the Commission shall find necessary to ensure that the corporate structure or continued existence of any company in the holding-company system does not unduly or unnecessarily complicate the structure, or unfairly or inequitably distribute voting power among security holders, of such holding-company system. In carrying out the provisions of this paragraph the Commission shall require each registered holding company (and any company in the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

The Commission may by order revoke or modify any order previously made under this subsection, if, after notice and opportunity for hearing, it finds that the conditions upon which the order was predicated do not exist. Any order made under this subsection shall be subject to judicial review as provided in section 24.

Section 11 (e) of the Public Utility Holding Company Act of 1935 provides:

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of section 11, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed.

(b) "Registered holding company," "holding-company system," and "associate company."—Under section 5 of the

Public Utility Holding Company Act of 1935 any holding company may register by filing with the Securities and Exchange Commission a notification of registration, in such form as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors or consumers. A holding company shall be deemed to be registered upon receipt by the Securities and Exchange Commission of such notification of registration. The term "registered holding company" as used in these regulations means a holding company whose notification of registration has been so received and whose registration is still in effect under section 5 of the Public Utility Holding Company Act of 1935. Under section 2 (a) (7) of the Public Utility Holding Company Act of 1935, a corporation is a holding company (unless it is declared not to be such by the Securities and Exchange Commission), if such corporation directly or indirectly owns, controls, or holds with power to vote 10 percent or more of the outstanding voting securities of a public-utility company (i. e., an electric utility company or a gas utility company as defined by such Act) or of any other holding company. A corporation is also a holding company if the Securities and Exchange Commission determines, after notice and opportunity for hearing, that such corporation directly or indirectly exercises (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility company (i. e., an electric utility company or a gas utility company as defined by such Act) or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such corporation be subject to the obligations, duties, and liabilities imposed upon holding companies by the Public Utility Holding Company Act of 1935. An electric utility company is defined by section 2 (a) (3) of the Public Utility Holding Company Act of 1935 to mean a company which owns or operates facilities used for the generation, transmission, or distribution to tenants, or employees of the other than sale to tenants or employees of the company operating such facilities for their own use and not for resale; and a gas utility company is defined by section 2 (a) (4) of such Act to mean a company which owns or operates facilities used for the distribution at retail (other than distribution only in enclosed portable containers, or distribution to tenants or employees of the company operating such facilities for their own use and not for resale) of natural or manufactured gas for heat, light, or power. However, under certain conditions the Securities and Exchange Commission may declare a company not to be an electric utility company or a gas utility company, as the

case may be, in which event the company shall not be considered an electric utility company or a gas utility company.

The term "holding company system" has the meaning assigned to it by section 2 (a) (9) of the Public Utility Holding Company Act of 1935, and hence means any holding company, together with all its subsidiary companies (i. e., subsidiary companies within the meaning of section 2 (a) (8) of such Act, which in general include all companies 10 percent of whose outstanding voting securities is owned directly or indirectly by such holding company) and all mutual service companies of which such holding company or any subsidiary company thereof is a member company. The term "mutual service company" means a company approved as a mutual service company under section 13 of the Public Utility Holding Company Act of 1935. The term "member company" is defined by section 2 (a) (14) of such Act to mean a company which is a member of an association or group of companies mutually served by a mutual service company.

The term "associate company" has the meaning assigned to it by section 2 (a) (10) of the Public Utility Holding Company Act of 1935, and hence an associate company of a company is any company in the same holding-company system with such company.

(c) "Majority-owned subsidiary company."—The term "majority-owned subsidiary company" is defined in section 373 (c). Direct ownership by a registered holding company of more than 50 percent of the specified stock of another corporation is not necessary to constitute such corporation a majority-owned subsidiary company. To illustrate, if the H Corporation, a registered holding company, owns 51 percent of the common stock of the A Corporation and 31 percent of the common stock of the B Corporation, and the A Corporation owns 20 percent of the common stock of the B Corporation (the common stock in each case being the only stock entitled to vote), both the A Corporation and the B Corporation are majority-owned subsidiary companies.

(d) "System group."—The term "system group" is defined in section 373 (d) to mean one or more chains of corporations connected through stock ownership with a common parent corporation, if at least 90 percent of each class of stock (other than stock preferred as to both dividends and assets) of each of the corporations (except the common parent corporation) is owned directly by one or more of the other corporations and the common parent corporation owns directly at least 90 percent of each class of such stock of at least one of the other corporations; but no corporation is a member of a system group if it is not either a registered holding company or a majority-owned subsidiary company. It is to be observed that while the type of stock which must be

at least 90 percent owned for the purpose of this definition (i. e., stock not preferred as to both dividends and assets) may be different from the voting stock which must be more than 50 percent owned for the purpose of the definition of a majority-owned subsidiary company under section 373 (c), yet as a general rule both types of ownership tests must be met under section 373 (d), since a corporation, in order to be a member of a system group, must also be a registered holding company or a majority-owned subsidiary company.

(e) "Nonexempt property."—The term "nonexempt property" is defined by section 373 (e) to include—

(1) The amount of any consideration in the form of a cancellation or assumption of debts or other liabilities (including a continuance of encumbrances subject to which the property was transferred). To illustrate, if in obedience to an order of the Securities and Exchange Commission the X Corporation, a registered holding company, transfers property to the Y Corporation in exchange for property (not nonexempt property) with a fair market value of \$500,000, the X Corporation receives \$100,000 of nonexempt property if, for example,

(A) The Y Corporation cancels \$100,000 of indebtedness owed to it by the X Corporation;

(B) The Y Corporation assumes an indebtedness of \$100,000 owed by the X Corporation to another company, the A Corporation; or

(C) The Y Corporation takes over the property conveyed to it by the X Corporation subject to a mortgage of \$100,000.

(2) Short-term obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace.

(3) Securities issued or guaranteed as to principal or interest by a government or subdivision thereof (including those issued by a corporation which is an instrumentality of a government or subdivision thereof).

(4) Stock or securities which were acquired after February 28, 1938, unless such stock or securities were acquired in obedience to an order of the Securities and Exchange Commission (as defined in section 373 (a)) and are not nonexempt property within the meaning of section 373 (e) (2) or (3).

(5) Money, and the right to receive money not evidenced by a security other than an obligation described as nonexempt property in section 373 (e) (2) or (3). The term "the right to receive money" includes, among other items, accounts receivable, claims for damages, and rights to refunds of taxes.

(f) "Stock or securities."—The term "stock or securities" is defined in section 373 (f) for the purposes of sections 371 to 373, inclusive. As therein defined the

term includes voting trust certificates and stock rights or warrants.

[SEAL] MILTON E. CARTER,
Acting Commissioner of
Internal Revenue.

Approved, November 16, 1938.

JOHN W. HANES,
Acting Secretary of the Treasury.

[F. R. Doc. 38-3470; Filed, November 17, 1938;
12:23 p. m.]

TITLE 29—LABOR

WAGE AND HOUR DIVISION

PART 511—REGULATIONS APPLICABLE TO INDUSTRY COMMITTEES PURSUANT TO SECTION 5 OF THE FAIR LABOR STAND- ARDS ACT *

The following Regulations—Part 511—(Regulations Applicable to Industry Committees Pursuant to Section 5 of the Fair Labor Standards Act) are hereby issued. Said Regulations—Part 511—repeal and re-enact without change, except by renumbering and by adding captions, Rules and Regulations Applicable to Industry Committees, approved by me September 22, 1938, and published in the FEDERAL REGISTER September 27, 1938.¹ Said Regulations—Part 511—shall become effective on my signing the original and upon the publication thereof in the FEDERAL REGISTER, and shall be in force and effect until repealed by Regulations hereafter made and published by me.

Signed at Washington, D. C. this 17th day of November, 1938.

ELMER F. ANDREWS,
Administrator.

Sec. 511.1 Appointment of members.—The members of an industry committee are appointed and the chairman designated by the Administrator.*

Sec. 511.2 Appointment of subcommittees.—The chairman of the industry committee may appoint authorized subcommittees of one or more persons from among the membership of the committee; provided, however, that the industry committee may, by a vote of not less than a majority of all its members, adopt a different procedure for the appointment of authorized subcommittees.*

Sec. 511.3 Convening of committee.—An industry committee may be convened by the Administrator from time to time for the purpose of recommending the minimum rate or rates of wages to be paid employees in the industry. Orders by the Administrator convening an industry committee shall be published in the FEDERAL REGISTER and otherwise made public in a general press release.*

Sec. 511.4 Call of meeting of committees.—The industry committee shall meet

at the call of the chairman or the Administrator. A subcommittee shall meet at the call of the chairman of the industry committee or the chairman of the subcommittee.*

Sec. 511.5 Place of meeting.—The industry committee and authorized subcommittees shall meet in Washington, D. C., unless the Administrator, or the chairman of the industry committee, or the chairman of the particular subcommittee, designates another place of meeting.*

Sec. 511.6 Quorum; requirement for decision of committee.—Two-thirds of the members of the industry committee shall constitute a quorum, and the decision of the industry committee shall require a vote of not less than a majority of all its members.*

Sec. 511.7 Personnel assistance for committees.—The chairman of the industry committee may request the Administrator to furnish specified legal, stenographic, clerical, and other assistance to the industry committee and to subcommittee.*

Sec. 511.8 Per diem and expense allowance for committee members.—Each member of the industry committee will be allowed a per diem of \$15 for each day actually spent in the work of the committee, and will in addition be reimbursed for necessary transportation and other expenses incident to traveling, in accordance with Standardized Government Travel Regulations, as amended, dated January 30, 1934, and December 10, 1935. All travel expenses will be paid on travel vouchers certified by the chairman of the committee. Any other necessary expenses which are incidental to the work of the committee will, after approval by the Administrator, or his authorized representative, be paid upon the certification of the chairman of the committee.*

Sec. 511.9 Committee to investigate conditions in the industry.—Upon being convened by the Administrator, the industry committee shall proceed as expeditiously as possible to investigate conditions in the industry for which it is appointed for the purpose of recommending the minimum rate or rates of wages to be paid employees in the industry.*

Sec. 511.10 Evidence to be submitted to committee.—The industry committee shall consider such data as is submitted to it by the Administrator and by interested persons. The chairman of the committee may call upon the Administrator to furnish additional information to aid the committee in its deliberation. Any interested person may submit in writing pertinent data to the committee either through the Administrator or through the chairman of the committee.*

Sec. 511.11 Witnesses and public hearings.—The industry committee, or an authorized subcommittee, may hear witnesses who may be summoned by the chairman of the industry committee or may be brought before it by the Adminis-

¹ 3 F. R. 2312 DI.

* Sections 511.1 through 511.22 issued under the authority contained in Section 5, 52 Stat. 1060.

trator. If an industry committee or an authorized subcommittee elects to hold a public hearing in the course of its investigations, the chairman of the committee or of the subcommittee shall cause to be inserted in the FEDERAL REGISTER and to be made public by a general press release a notice of the time, place, and scope of such hearing, at least 5 days before the date of such hearing.*

SEC. 511.12 *Journal to be kept by committee.*—The industry committee shall keep a journal, recording the time and place of all its meetings, the members present, the votes, and other formal proceedings, including the appointment of subcommittees; but shall not be required to keep a stenographic transcript of any testimony that may be given before it or of its discussions. Subcommittees shall keep a similar journal.*

SEC. 511.13 *Subpoena power of committee.*—For the purpose of performing its duties and functions, an industry committee may exercise the powers conferred by the provisions of Sections 9 and 10 (relating to the attendance of witnesses and the production of books, papers, and documents) of the Federal Trade Commission Act of September 26, 1914, as amended (U. S. C., 1934 edition, title 15, sections 49 and 50). These sections are set forth in full in the appendix to these regulations. Subpoenas and orders for the taking of testimony by deposition shall be issued only by the chairman of the industry committee or of a subcommittee upon forms to be furnished by the Administrator, and oaths shall be administered only by the chairman of the industry committee or of a subcommittee. Applications to a court for the enforcement of a subpoena shall be made only by the Administrator or his authorized deputy.*

SEC. 511.14 *Privacy of information.*—No member of an industry committee shall make public any information obtained by the committee or a subcommittee thereof without the approval of the Administrator.*

SEC. 511.15 *Payment of witnesses.*—Witnesses summoned before a committee shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.*

SEC. 511.16 *Progress reports to administrator.*—When called upon by the Administrator, an industry committee shall furnish him with such reports relating to its activities and such other information as he may request.*

SEC. 511.17 *Recommendation to administrator on scope of industry.*—An industry committee may, at any time, rec-

ommend to the Administrator that the scope of the industry as defined in the order appointing the committee be enlarged, modified, or restricted.*

SEC. 511.18 *Final recommendations; basic considerations.*—To reach the objective of a universal minimum wage of 40 cents an hour as rapidly as is economically feasible, the committee, in accordance with the declared policy of the act to eliminate labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency, and general well-being of workers, shall recommend the highest minimum-wage rates for the industry which it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in the industry. The industry committee shall recommend such reasonable classifications as it determines to be necessary for the purpose of fixing for each classification within such industry the highest minimum-wage rate (not in excess of 40 cents an hour) which (1) will not substantially curtail employment in such classifications, and (2) will not give competitive advantage to any group in the industry, and shall recommend for each classification in the industry the highest minimum-wage rate which the committee determines will not substantially curtail employment in such classifications. In determining whether such classifications should be made in the industry, in making such classifications, and in determining the minimum-wage rate for such classifications, no classification shall be made and no minimum-wage rate shall be fixed solely on a regional basis, but the industry committee shall consider among other relevant factors the following:

(1) Competitive conditions as affected by transportation, living, and production costs;

(2) The wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(3) The wages paid for work of like or comparable character by employers who voluntarily maintain minimum-wage standards in the industry.

No classification shall be made on the basis of age or sex.*

SEC. 511.19 *Report of committee; recommendations and reasons.*—Upon the completion of its investigation, the industry committee shall submit to the Administrator a report containing its recommendations together with a statement of the reasons supporting such recommendations. No such recommendations shall be made by the committee unless concurred in by a vote of not less than the majority of all its members.

The report shall be signed by all the members of the committee who approve it. Members dissenting therefrom shall note their dissent and append a signed statement in explanation thereof.*

SEC. 511.20 *Records deposited with administrator.*—After a report is submitted, the committee shall deposit with the Administrator all of its records and documents.*

SEC. 511.21 *Dissolution of committee.*—If an industry committee is unable to arrive at a recommendation or refuses to make a recommendation, or unreasonably delays its work, it may be dissolved by the Administrator.*

SEC. 511.22 *End of committee's function.*—When a committee has submitted a report, as provided in section 511.19 hereof, it shall cease to perform any further functions until reconvened by the Administrator; provided, however, that the Administrator may dissolve the committee after it has submitted its report.

APPENDIX TO REGULATIONS PART 511

[Referred to in Section 511.13]

AN ACT TO CREATE A FEDERAL TRADE COMMISSION, TO DEFINE ITS POWERS AND DUTIES, AND FOR OTHER PURPOSES (38 STAT. 717)

SEC. 9. That for the purposes of this Act the commission, or its duly authorized agent or agents, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any documentary evidence of any corporation being investigated or proceeded against; and the commission shall have power to require by subpoena the attendance and testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. Any member of the commission may sign subpoenas, and members and examiners of the commission may administer oaths and affirmations, examine witnesses, and receive evidence.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the commission may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of documentary evidence.

Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any corporation or other person issue an order requiring such corporation or other person to appear before the commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Upon the application of the Attorney General of the United States, at the request of the commission, the district courts of the United States shall have jurisdiction to issue writs of mandamus commanding any person or corporation to comply with the provisions of this Act or any order of the commission made in pursuance thereof.

The Commission may order testimony to be taken by deposition in any proceeding or investigation pending under this Act at any

stage of such proceeding or investigation. Such deposition may be taken before any person designated by the commission and having power to administer oaths. Such testimony shall be reduced to writing by the person taking the deposition, or under his direction, and shall then be subscribed by the deponent. Any person may be compelled to appear and depose and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the commission as hereinbefore provided.

Witnesses summoned before the commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

No persons shall be excused from attending and testifying or from producing documentary evidence before the commission or in obedience to the subpoena of the commission on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no natural person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before the commission in obedience to a subpoena issued by it: Provided, That no natural person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Sec. 10. That any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce documentary evidence, if in his power to do so, in obedience to the subpoena or lawful requirement of the commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than \$1,000 nor more than \$5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Any person who shall willfully make, or cause to be made, any false entry or statement of fact in any report required to be made under this Act, or who shall willfully make, or cause to be made, any false entry in any account, record, or memorandum kept

by any corporation subject to this Act, or who shall willfully neglect or fail to make, or to cause to be made, full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the business of such corporation, or who shall willfully remove out of the jurisdiction of the United States, or willfully mutilate, alter, or by any other means falsify any documentary evidence of such corporation, or who shall willfully refuse to submit to the commission or to any of its authorized agents, for the purpose of inspection and taking copies, any documentary evidence of such corporation in his possession or within his control, shall be deemed guilty of an offense against the United States, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than \$1,000 nor more than \$5,000, or to imprisonment for a term of not more than three years, or to both such fine and imprisonment.

If any corporation required by this Act to file any annual or special report shall fail so to do within the time fixed by the commission for filing the same, and such failure shall continue for thirty days after notice of such default, the corporation shall forfeit to the United States the sum of \$100 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States brought in the district where the corporation has its principal office or in any district in which it shall do business. It shall be the duty of the various district attorneys, under the direction of the Attorney General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

Any officer or employee of the commission who shall make public any information obtained by the commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

Approved September 26, 1914.

[F. R. Doc. 38-3472; Filed, November 17, 1938; 12:44 p. m.]

TITLE 49—TRANSPORTATION AND RAILROADS INTERSTATE COMMERCE COMMISSION

CANCELLATION OF OBSOLETE ORDERS

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 10th day of November, A. D. 1938.

The Commission, pursuant to directions contained in the Federal Register Act, 49 Stat. 500-503, as amended, having under consideration a codification of all documents which, in its opinion, have general applicability and legal effect in connection with its functions and duties under section 19a of the Interstate Commerce Act,

And it appearing, That certain orders heretofore entered by it, by reason of subsequent orders or for other reasons, have now become obsolete;

It is ordered, That Valuation Orders Nos. 2 and 10, dated May 12, 1914, and December 23, 1914, respectively, relating to abandoned property; Valuation Order No. 9, dated April 4, 1916, relating to transportation of employees, supplies and cars of the Bureau of Valuation; Valuation Order No. 13, dated February 9, 1915, relating to schedules of property owned or used by steam carriers; and Valuation Order No. 21, dated July 6, 1917, relating to specifications for maps, charts, and schedules of telegraph and telephone properties in so far as applicable to railroads, be, and they are hereby, cancelled.

By the Commission.

[SEAL]

W. P. BARTEL,
Secretary.

[F. R. Doc. 38-3471; Filed, November 17, 1938; 12:24 p. m.]

50 Stat. 304.